

9200/1635

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: MAIL STOP PETITION, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450, ON THE DATE INDICATED BELOW.



BY: June M. Alway

DATE: July 28, 2003
MAIL STOP PETITION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re: Patent Application of : Group Art Unit: 1635 #10
Thomas Maciag, et al.

Appln. No.: 10/022,554 :

Filed: February 24, 2000 : Examiner: Jon E. Angell

For: COMPOSITIONS, METHODS AND KITS : Attorney Docket No. 54474-5005
RELATING TO THROMBIN : (53689-5023)
DEGRADATION RESISTANT FIBROBLAST :
GROWTH FACTOR-1 :
:

**PETITION TO WITHDRAW
HOLDING OF ABANDONMENT
PURSUANT TO 37 C.F.R. §1.181**
RESTRICTION REQUIREMENT NOT RECEIVED

RECEIVED
AUG 04 2003
TECH CENTER 1600/2800

This Petition is hereby made to the Commissioner to withdraw the holding of abandonment in the above-captioned application. A Notice of Abandonment dated July 1, 2003, copy of which is enclosed, was received on July 3, 2003, stating that Applicants failed to respond to the Restriction Requirement mailed on November 6, 2002. Applicants respectfully submit that the Restriction Requirement was never received by Applicants' undersigned representatives ("Petitioners" herein), and that the holding of abandonment should therefore be withdrawn under 37 C.F.R. §1.181 and pursuant to MPEP §711.03(c) based on failure to receive the office action. This Petition is being timely filed.

Petitioners hereby declare that:

1. On February 7, 2002, a filing receipt and a Notice to File Missing Parts dated January 31, 2002 were received by Petitioners from the PTO.
2. On February 19, 2002, Petitioners filed a response to the Notice to File Missing Parts.
3. On February 25, 2002, Petitioners filed a Request for Corrected Filing Receipt.
4. On March 5, 2002, Petitioners filed an Information Disclosure Statement, Form PTO-1449, and

attendant references.

5. On March 29, 2002, Petitioners received a corrected filing receipt from the PTO dated March 25, 2002. On April 4, Petitioners received another corrected filing receipt from the PTO dated April 1, 2003.
6. A thorough search of the file jacket demonstrated that with the exception of the above-referenced documents and the return receipt postcards, which are stamped to indicate that these documents were received by the PTO, the two filing receipts are the last correspondence originating from the PTO, which were received by Petitioners regarding the above-referenced application prior to receipt of the Notice of Abandonment dated July 1, 2003.
7. On or about June 23, 2003, Petitioners' undersigned representative, Raquel M. Alvarez, Esquire, contacted Examiner Angell to ascertain the status of the application. Examiner Angell informed Dr. Alvarez that the application would go abandoned for failure to respond to the restriction requirement.
8. Upon receipt of this information, and prior to receiving the official Notice of Abandonment on July 3, 2003, Petitioners reviewed a log of all incoming mail from the PTO for the pertinent period, *i.e.*, from November 8, 2002, through November 13, 2002, to definitively determine whether the Restriction Requirement had been received by Petitioners. That is, Petitioners' law firm, Morgan, Lewis & Bockius, LLP ("MLB"), maintains an "Incoming PTO Log," wherein all correspondence received from the PTO is routinely recorded. During the time period in question, an entry was made in the Incoming PTO Log for each piece of correspondence indicating the application number on the correspondence, the nature of the correspondence, the client matter number (attorney docket number), and the name or initials of the person to which the correspondence was routed. Docketing information was then recorded in MLB's automated docketing system for a response, including any response deadline(s) pertaining to each piece of correspondence, for the attention of the responsible attorney. If a document does not appear on the Incoming PTO Log, there is no possibility that it was received or docketed by Petitioners.
9. A copy of the MLB Incoming PTO Log for the period from November 8, 2002, through November 13, 2002, is attached as Exhibit A. This log demonstrates that Petitioners did not receive the office action in question because the Restriction Requirement would have been entered on the Incoming PTO Log had it been received and no such entry appears on the log.
10. Also attached is a copy of Petitioners' application computer docket report for the period of September 12, 2001, to present, for the above-captioned application, which is marked as Exhibit

B. The attached printout reflects all docketed matters for the application (Ser. No. 10/022,554), including during the period in question. The application computer docket report entries for the application (referenced by case number 53689-5023, which is previous case number 54474-5005) demonstrate that the Restriction Requirement was not received by Petitioners. This is because if a Restriction Requirement had been received, it would have been duly docketed in Petitioners' computer docketing system, which would have also provided a response period for the office action. That is, if the nonreceived action had been received and docketed, a record of the Restriction Requirement, and the deadline for a response thereto, would have appeared on this computer docket report. The fact that no such entry appears on the computer docket report further demonstrates that Petitioners never received the Restriction Requirement apparently sent by the PTO on November 6, 2002.

11. In addition, a search of the application file jacket was made and did not result in the paper in question being found. Based upon Petitioners' file jacket search, review of the PTO Incoming Log, and review of the computer docketing record, Petitioners believe and assert that the Restriction Requirement mailed on November 6, 2002, was never received.
12. In sum, Petitioners' review of the pages of Petitioners' MLB Incoming PTO Log for the period from November 8, 2002, through November 13, 2002, shows no indication of the receipt of a Restriction Requirement in the above-referenced application. Further, Petitioners' review of the computer docketing entries made during that same time period reveals no docketing entries corresponding to a response deadline for any Restriction Requirement for this application. If the Restriction Requirement had been received, it would have been indicated on these records. Additionally, a search of the file jacket demonstrated that the Restriction Requirement was not received by Petitioners. Thus, Petitioners respectfully submit that the Restriction Requirement was either never mailed or it was lost in the mail and that the facts averred herein amply support that the Restriction Requirement was not received by Petitioners and that the holding of abandonment should be withdrawn for failure to receive the office action.

Accordingly, it is respectfully requested that the holding of abandonment of this application be withdrawn and the above-captioned application (No. 10/022,554) be reinstated. Further, although Examiner Angell has kindly faxed Petitioners a courtesy copy of the original Restriction Requirement, it is respectfully requested that the Restriction Requirement be remailed to Petitioners and a new statutory period for response be set therefor.

Petitioners believe that there is no fee required with respect to this Petition. However, in the event any fee is necessary, please charge such fee to Deposit Account No. 50-0310 (Internal Billing No. 53689-5023).

Respectfully submitted,

THOMAS MACIAG, ET AL.

July 28, 2003
(Date)

By:

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/dp

Enclosures:

Exhibit A – Copy of MLB's Incoming PTO Log from November 8, 2002 through November 13, 2002

Exhibit B – Copy of Application Computer Docket Report from September 12, 2001 to present

Copy of Notice of Abandonment, dated July 1, 2003

PHILADELPHIA INCOMING PTO LOG

EXHIBIT A

DATE and TIME	SERIAL NO.	DOCKET NO. (our Reference)	DESCRIPTION OF MAIL	Logged In By With EXT
			Fax to Vergeen Confidentiality Agmt Orthogonal Vergeen	UWB
		53467 5003 CJ	Fax from Mire Can not uncheck deadline past Normal after first OA	DHR
		53467 5007 PC	Fax from Mire will present 39 new claims in reverse of first. prior to 11/25	DHR
		54154 5001	Received Mail prepared deal + paid all expenses beginning against all inventories	UWB

PHILADELPHIA INCOMING PTO LOG

PHILADELPHIA INCOMING PTO LOG

DATE and TIME	SERIAL NO.	DOCKET NO. (Our Reference)	DESCRIPTION OF MAIL	Logged In By With EXT
11/10	57894		Dtr. from Schureman 10/24/51, 191 Copy of Fr	
	57895		Dtr. from Fullbright Copy of DA for Mandate No. 2, 131, 170	KD
	57896		Excluded Docs Assign & drawings	KD
	57897		57897 PR	
	57898		57898 PR	
	57899		57899 PR	
	57900		57900 PR	
	57901		57901 PR	
	57902		57902 PR	
	57903		57903 PR	
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PHILADELPHIA INCOMING PTO LOG

DATE and TIME	SERIAL NO.	DOCKET NO. (Our Reference)	DESCRIPTION OF MAIL	Logged In By With EXT
11/8	W01312, 039		PTO - Received received copy of Reg for Corrected Notice of Recitation Ad	
			10/29/02 U.S. from WSO forwarded from 44 min. Assoc Ith to Shwartz re Rutgers Employee ID	

11/8	W01312, 039		U.S. from Smart & Beeson Copy of WSO forwarded to WSO Frank, Germany, Ireland & GB Grant. U.S. 00089
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DATE and TIME	SERIAL NO.	DOCKET NO. (Our Reference)	DESCRIPTION OF MAIL	Logged In By With EXT
11/8			Mr. from Rockefeller Univ. Safety procedures	
			Mr. from Rockefeller re PW 630 - Non disclosure	
			Fwd from Thermodynamics Tony Weider Invention Disclosure	CWB
			Mr. : Kim & Change re: Plaintiff Office	KD

PHILADELPHIA INCOMING PTO LOG

DATE and TIME	SERIAL NO.	DOCKET NO. (Our Reference)	DESCRIPTION OF MAIL	Logged In By With EXT
11/18		54756 5001 EP1	Fax - Copy copy of 11/7 last to whom & date by 11/8 deadline	LWB
			Fed Ex from GMAC message	PAB
			Fed Ex from Action	CIT
				Fed Ex from Spaney
				KSD

PHILADELPHIA INCOMING PTO LOG

		DESCRIPTION OF MAIL		Logged In By With EXT
DATE and TIME	SERIAL NO.	DOCKET NO. (Our Reference)		
11/11/02			Fed Ex from Circuit	
			GHG	
			Letter from CIRCUIT confirming reg to do as filed	
			DH6	
			Notice of publication	
			KD	
			"	
			"	
			DHS	
			9/8/02, 06	

PHILADELPHIA INCOMING PTO LOG

DATE and TIME	SERIAL NO.	DOCKET NO. (Our Reference)	DESCRIPTION OF MAIL	Logged In By With EXT
11/11/62	10645-992		Notice of Publication	
			1D	
			opened 1hr from rec'd Counsel ccv receipt of docs	
			TS	
			Given/Pmt 1hr re American Tele Cross	
			1CD	
			Given/Pmt 1hr re American Tele Cross	
			ICD	

PHILADELPHIA INCOMING PTO LOG

DATE and TIME		SERIAL NO.	DOCKET NO. (Our Reference)	DESCRIPTION OF MAIL	Logged In By With EXT
11/11/02	11:00	6190195	10166332	Notice of Abandonment	DH5
					DH5
					DH5

PHILADELPHIA INCOMING PTO LOG

DATE and TIME		SERIAL NO.	DOCKET NO. (Our Reference)	DESCRIPTION OF MAIL	Logged In By With EXT
11/11/62	09	091841, 732		Notice of publication	DHG
					DHG
					DHG
					KCP

PHILADELPHIA INCOMING PTO LOG

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DATE and TIME	SERIAL NO.	DOCKET NO. (Our Reference)	DESCRIPTION OF MAIL	Logged In By With EXT
11/11/02	53844- 50060A	HHR from C000C reg con't due 4/29/03 (not bad date)	VIP	
	11/23/02	DPO reg to reg for Court of Appeals, Philadelphia, Pa. Reg no discrepancy found in do. Reg line 58 claim 21-Add. Court Reg will be cancelled 11/25		
	011073660	HHR from Toyister's reg information in due care	RPN	
	per 11000 [redacted]	DCT notice informs applicant of communication of int'l. Appln to designated offices & publication DHTS		

PHILADELPHIA INCOMING PTO LOG

DATE and TIME	SERIAL NO.	DOCKET NO. (Our Reference)	DESCRIPTION OF MAIL	Logged In By
				With EXT
11/11/02	PCT 11001 GUS3		Rejected Publication NO	
			PCT notice concerning Gibson or transmittal of Priority doc	
			DH5	
			ltr from AAC enclosing Publication - Protection in AAC due 4/16/03	
			IPS	
			Conf. Copy of 10/21/02 Fax RE: AdditonalS	
			HOP	

PHILADELPHIA INCOMING PTO LOG

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DATE and TIME	SERIAL NO.	DOCKET NO. (Our Reference)	DESCRIPTION OF MAIL	Logged In By With EXT
11/12/02	01914469.6		ltr from GDOC Confirming Filing of Reg. listing	16D
	11748		ltr from GDOC Confirming Payment of Annuity; next due 1-7-04	17H/5
			PCT notice of receipt of Record copy	17H/5
			per 18002 29539	11
			per 18002 63856	11B

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DATE and TIME	SERIAL NO.	DOCKET NO. (Our Reference)	DESCRIPTION OF MAIL	Logged In By With EXT
11/10/02			144 from Townsend & Townsend Confirming receipt of transferred files	
			PCT notice informing applicant of communication of int'l appn to des. offices of publication	
			Notice of publication	

PHILADELPHIA INCOMING PTO LOG

PHILADELPHIA INCOMING PTO LOG

DATE and TIME	SERIAL NO.	DOCKET NO. (Our Reference)	DESCRIPTION OF MAIL	Logged In By With EXT
11/12/02	9491923.4	53645- 5003 EP	ltr from ADOC incl. Granted Patent	
			11/13	
11/13/02	0331834		Fax from ADOC incl. Examiner's Objections, rsp due 1/8/03 instructions by 12/14/02	
			11/13	
			rsp to Stalew Inquiry recd from DC	
			11/13	
			11/13	
			Tissue Notification recd from DC	
			11/13	
			DHG	

Country Application

22-Jul-03

Case Number: 53689-5023**SubCase:****Location:** PH Philadelphia Office**Client:** 53689 Maine Medical Center Research Institute**Country:** US United States of America**CtrySub:****Title:** COMPOSITIONS, METHODS AND KITS RELATING TO THROMBIN DEGRADATION RESISTANT FIBROBLAST GROWTH FACTOR-1**Case Type:** ORD**Application Status:** Pending**Application Number:** 10/022,554**Filing Date:** 17-Dec-2001**Patent Number:****Issue Date:****Publication Number:****Publication Date:****Priority Number:****Priority Date:****Inv.Priority Number:****Expiration Date:****Client Ref #:****Tax:** SE**Agent:****Agent Reference Number:****List Of User Actions**

Action(s) Du	Due Date	Action Taken
Application Due - 2 weeks	13-Sep-2001	Reminder 12-Sep-2001
Application Due - 1 week	20-Sep-2001	Reminder 20-Sep-2001
File Application - Tentative	30-Sep-2001	Due Date 28-Sep-2001
File Application - Tentative	30-Oct-2001	Due Date 30-Oct-2001
File Application - Tentative	30-Nov-2001	Due Date 30-Nov-2001
File Application - Tentative	30-Dec-2001	Due Date 17-Dec-2001
Missing Parts Received	03-Feb-2002	Reminder 19-Feb-2002
OFR Recd - 5 days ago	12-Feb-2002	Reminder 07-Feb-2002
Missing Parts Due - Tentative	17-Feb-2002	Status 07-Feb-2002
US-Assignment Filed	25-Feb-2002	Due Date 25-Feb-2002
Response Due-MP - 1 month	28-Feb-2002	Reminder 19-Feb-2002
OFR-Report to Client Due	28-Feb-2002	Due Date 07-Feb-2002
File Req for Corrected FR	12-Mar-2002	Due Date 25-Feb-2002
Response Due-MP - 2 weeks	14-Mar-2002	Reminder 19-Feb-2002
Information Disclosure Stmt	17-Mar-2002	Due Date 05-Mar-2002
Application Filed-FR Rec?	17-Mar-2002	Status 07-Feb-2002
Response Due-MP - 1 week	24-Mar-2002	Reminder 19-Feb-2002

Country Application

22-Jul-03

Response Due - MP	31-Mar-2002	Due Date	19-Feb-2002
1st EOT - 2 weeks	14-Apr-2002	Reminder	19-Feb-2002
1st EOT Due - 1 week	23-Apr-2002	Reminder	19-Feb-2002
MP 1st EOT Due	30-Apr-2002	Due Date	19-Feb-2002
2nd EOT - 2 weeks	14-May-2002	Reminder	19-Feb-2002
RA Received 5 days ago	18-May-2002	Reminder	23-May-2002
2nd EOT Due - 1 week	24-May-2002	Reminder	19-Feb-2002
MP 2nd EOT Due	31-May-2002	Due Date	19-Feb-2002
RA-Report to Client Due	03-Jun-2002	Due Date	23-May-2002
3rd EOT - 2 weeks	14-Jun-2002	Reminder	19-Feb-2002
Foreign Filing - 6 months	17-Jun-2002	Reminder	11-Dec-2002
MP Filed - Status Check	19-Jun-2002	Status	04-Apr-2002
3rd EOT Due - 1 week	23-Jun-2002	Reminder	19-Feb-2002
Filed - Corrected FR Due	25-Jun-2002	Status	29-Mar-2002
MP 3rd EOT Due	30-Jun-2002	Due Date	19-Feb-2002
4th EOT - 2 weeks	14-Jul-2002	Reminder	19-Feb-2002
4th EOT Due - 1 week	24-Jul-2002	Reminder	19-Feb-2002
MP 4th EOT Due	31-Jul-2002	Due Date	19-Feb-2002
5th EOT Due - 2 weeks	14-Aug-2002	Reminder	19-Feb-2002
5th EOT Due - 1 week	24-Aug-2002	Reminder	19-Feb-2002
Recordation Due	25-Aug-2002	Status	05-Mar-2002
MP - 5th EOT Due - FINAL	31-Aug-2002	Final	19-Feb-2002
Foreign Filing - 3 month	17-Sep-2002	Reminder	11-Dec-2002
Instructs due from Maine Med	12-Oct-2002	Due Date	11-Dec-2002
Foreign Filing - 1 month	17-Nov-2002	Reminder	11-Dec-2002
NO FOLLOW UP DATE	23-Nov-2002	Status	23-May-2002
Foreign Filing - 2 week	02-Dec-2002	Reminder	11-Dec-2002
Instructs due from Maine Med	10-Dec-2002	Due Date	10-Dec-2002
Foreign Filing - 1 week	10-Dec-2002	Reminder	11-Dec-2002
12 month Status Check	17-Dec-2002	Status	17-Dec-2002
Foreign Filing - Due	17-Dec-2002	Final	11-Dec-2002
PCT ISR rcd Check Ids	15-Jun-2003	Due Date	16-Jun-2003
18 month Status Check	17-Jun-2003	Status	17-Jun-2003
Awaiting notice of abandonment	05-Jul-2003	Due Date	03-Jul-2003
File Pet to Revive -	08-Jul-2003	Reminder	

Country Application

22-Jul-03

PCT ISR rcd Check IDS	15-Jul-2003	Due Date	15-Jul-2003
File Status Inquiry - 19 mo	17-Jul-2003	Status	24-Jun-2003
Petition to Revive- 6wks	21-Jul-2003	Reminder	
Petition to Revive- 1month	01-Aug-2003	Reminder	
PCT ISR rcd CHECK IDS	15-Aug-2003	Due Date	
Petition to Reviven - 2wks	18-Aug-2003	Reminder	
Petition to Revive - 1week	25-Aug-2003	Status	
Petition to Revive - tomorrow	31-Aug-2003	Due Date	
Petition to Revive	01-Sep-2003	Final	

Remarks: Notice of Abandonment dated 7/1/03 rcd inphilly;
6/30/03 fax from pto enc 1 mo RR dated 11/6/02 (not docketed) awaiting notice of
abandonment;
6/24/03 call from examiner, will issue abandonment, advise to file withdrawal of
~~holding of abandonment until fax D.D.~~

User ID: judy

Date Created: 30-Aug-2001

Last Update: 18-Jul-2003

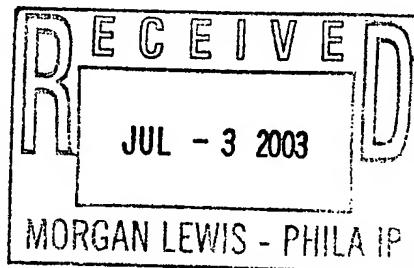


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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,554	12/17/2001	Thomas Maciag	54474-5005	3856
28977	7590	07/01/2003		
MORGAN, LEWIS & BOCKIUS LLP 1701 MARKET STREET PHILADELPHIA, PA 19103-2921			EXAMINER	
			ANGELL, JON E	
		ART UNIT	PAPER NUMBER	9
		1635		
DATE MAILED: 07/01/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.



Docketed 7/3/03 Attorney LMA
Case 54474-5005
Due Date 9-1-03
Action Petition to Revive
By SPT Chk MTA

Notice of Abandonment	Application No.	Applicant(s)
	10/022,554	MACIAG ET AL.
	Examiner J. Eric Angell	Art Unit 1635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. Applicant's failure to timely file a proper reply to the Office letter mailed on 06 November 2002.
 - (a) A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) No reply has been received.
2. Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) The issue fee and publication fee, if applicable, has not been received.
3. Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) No corrected drawings have been received.
4. The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. The reason(s) below:

See Continuation Sheet

J. Eric Angell

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Item 7 - Other reasons for holding abandonment: Racquel Alvarez was contacted on 6/23/03. Ms. Alvarez indicated that no restriction requirement was ever received by Applicants; therefore, no response was ever submitted. Ms. Alvarez was informed that the application was abandoned because no reply had been submitted. Ms. Alvarez was also informed that Applicants had two (2) months from the mailing date of the notice of abandonment to timely file a petition (see CFR 1.181 (f)). Furthermore, Ms. Alvarez was directed to MPEP 711.03 (c), sections I and II for guidance on filing a proper petition. The Examiner agreed to fax a copy of the restriction requirement in order to expedite prosecution.



DAVE T. NGUYEN
PRIMARY EXAMINER